IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 697 OF 2007.
IN
CRIMINAL APPEAL NO. 1090 OF 2006

Ijjat Ali Munullah Salmani ..Applicant
And
Mustaq Ali MaNULLAH sALMANI ..Orig.accused.
V/s
The State of Maharashtra & Ors. ..Respondents.

Mr.B.W. Kakade, Advocate for the applicant.

Mrs.V.R. Bhosale with Mrs. A.S. Pai, APP for the State.

CORAM : R.M.S.KHANDEPARKAR AND
SMT. V.K. TAHILRAMANI, JJ.

DATE : 10TH JULY , 2007.

P.C.

. Heard Mr.Kakade, learned Counsel for the applicant and Mrs. Bhosale, learned APP for the State. The applicant Ijjat Ali Munullah Salmani is the brother of the original accused Mustaq Ali Manullah Salmani, who is convicted mainly for the offence under Section 302 of Indian Penal Code. It is the contention of the applicant that his brother Mustaq Ali Manullah Salmani is suffering from insanity and hence this application has been preferred with the prayer that Mustaq Ali Manullah Salmani be sent to the Thane Mental Hospital.

It is submitted by Mr.Kakade that at the time of incident, which occurred in October, 2003, the brother of the applicant namely Mustaq Salmani was insane and hence, it is necessary to send Mustaq Salmani to the Thane Mental Hospital.

2. As far as the aspect of insanity is concerned, the trial Court has dealt with the said aspect. The witnesses examined by the defence did not state any thing which shows that the behaviour of the accused Mustaq Salmani was aggressive prior to the date of the incident and/or that at the time of the incident he was under an attack of insanity. In fact, the trial Court has also observed that from the evidence on record regarding the behaviour of Mustaq Salmani it cannot be concluded that he was suffering from insanity. Moreover, an affidavit has been filed by the Jailor attached to Kolhapur Central Prison where the accused Mustaq Salmani is lodged. In the said affidavit it is stated that Mustaq Salmani is in Central Prison, Kolhapur from 24/9/2006 and since 9/10/2006, in fact, Mustaq Salmani has been given the job of hair cutting (barber) in the jail. In the affidavit it is clearly stated that at no point of time Mustaq Salmani has

exhibited any sign of insanity. It is further stated that Mustaq Ali has only complained about insufficient sleep, hence, Mustaq Salmani was referred to the jail hospital and necessary treatment has been given to him. The affidavit states that all necessary medical treatment is being provided to the accused Mustaq Salmani. Obviously if Mustaq Salmani is suffering from the slightest degree of insanity, he would not have been entrusted with the job of hair cutting, which requires some degree of skill and the use instruments which are sharp edged and dangerous. Looking to all these above facts, we are of the opinion that no case is made out to send Mustaq Salmani to the Thane Mental Hospital.

3. The application is rejected.

4. Liberty is granted to the applicant to prepare paper book privately at his own cost and thereafter mention the matter for a fixed date of hearing.

(R.M.S. KHANDEPARKAR, J.)

(SMT. V.K.TAHILRAMANI,J.)